

ORLEANS PARISH CLERK OF
CRIMINAL DISTRICT COURT



COMPLIANCE AUDIT

ISSUED FEBRUARY 28, 2007

**LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397**

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STEVE J. THERIOT, CPA
LEGISLATIVE AUDITOR

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February 28, 2007

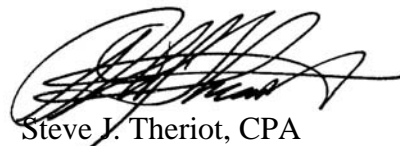
THE HONORABLE ARTHUR A. MORRELL
CLERK OF COURT
ORLEANS PARISH CRIMINAL DISTRICT COURT
New Orleans, Louisiana

We have audited certain transactions of the Orleans Parish Clerk of Criminal District Court in accordance with Title 24 of the Louisiana Revised Statutes. Our audit covered the period February 2004 through April 2006 when Ms. Kimberly Butler was the Clerk of Court. Our audit was performed to evaluate expense reimbursements, use of office credit cards, handling of evidence room money after Hurricane Katrina, and awarding a contract to clean up the evidence room after Hurricane Katrina.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the Clerk of Court's financial statements or system of internal control nor assurances as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response.

Respectfully submitted,



Steve J. Theriot, CPA
Legislative Auditor

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Ms. Kimberly Butler, former Orleans Parish Criminal Clerk of Court, converted at least \$364,665 that should have been remitted to the City of New Orleans to the use of the Clerk's Office. An additional \$10,312 was counted but not deposited into an account maintained by the Clerk's Office and remains missing. Ms. Butler also paid Bio-Defense America, a disaster recovery contractor, \$200,000 without adequate documentation to support the work performed.

In addition, during the period February 2004 through May 2006, 279 transactions totaling \$41,804 were charged to the Orleans Parish Clerk of Criminal District Court's credit card. However, only 75 receipts were submitted to support the transactions. The business purpose, necessity, and reasonableness could not be determined for several of the items purchased. The Clerk's Office also incurred \$1,849 in finance charges and late penalties during the period.

Ms. Butler also created the Clerk's Clean Slate Program, a community outreach program, and then used \$7,085 of public funds to pay for T-shirts, consulting, and food for the program. These expenditures appear to be a donation of public assets prohibited by the Louisiana Constitution.

Improper Handling of Evidence Room Money

Louisiana Revised Statute 15:32¹ allows money used as evidence of a crime in closed criminal cases, which has been held by the Clerk of Court for at least five years after final disposition, to be transferred to the governing authority of the parish. Before Ms. Butler became Clerk of Court, the common practice in Orleans Parish was for the Clerk to seek approval from the Mayor's Office to retain money from cases closed five years or more and to use those funds as needed for Clerk of Court expenses.

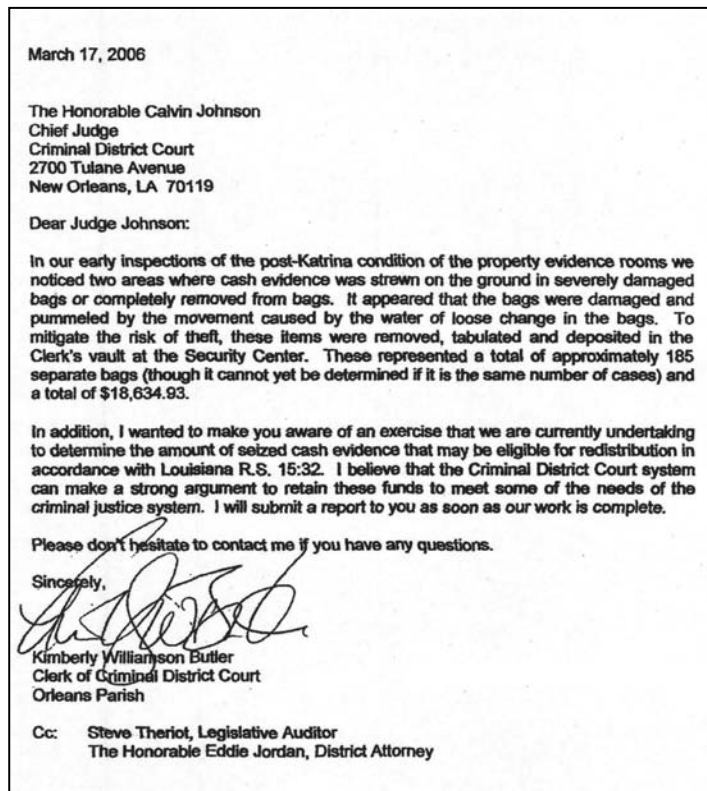
On December 22, 2004, Ms. Butler requested approval from the City/Parish to keep the cash held longer than five years so it could be used by the Clerk's Office. The City/Parish acknowledged Ms. Butler's request on January 5, 2005, without granting or denying approval to retain the cash.

After Hurricane Katrina, Ms. Butler instructed her staff to remove evidence room cash without the City/Parish's approval. On November 14, 2005, Clerk's Office employees began counting the cash that was removed from the evidence room and on December 12, 2005, made the first deposit into a newly opened account at Hibernia National Bank though the City had not given the Clerk approval to retain the cash for Clerk's Office use. Subsequent deposits were made on December 13, 2005, December 14, 2005, and February 3, 2006. The final deposit made on March 23, 2006, brought the total of evidence room cash deposited to \$364,665. Because floodwaters inundated the evidence rooms and destroyed evidence envelopes, it cannot be determined from the Clerk's Office records the actual amount of cash that was removed from the evidence rooms. The cash that was removed and deposited was used to pay office rent, attorney fees, cellular telephone bills, and Bio-Defense, a disaster damage remediation contractor.

¹ **Louisiana Revised Statute 15:32** provides that whenever any money used as evidence of a crime in criminal cases and thereafter deposited with the clerk of the district court is not disposed of by the district attorney within five years after final disposition of the case, the clerk of the district court shall remit all of such funds to the governing authority of the parish to be placed to the credit of the general fund of the parish.

In addition, Clerk employees counted \$10,312 that was never deposited. On March 16, 2006, Clerk employees recorded in a logbook that they counted \$33,490 which contained a \$1,000 error and should have been recorded as \$32,490.

On March 17, 2006, Ms. Taryn Carter and Mr. Mark Lawes, Clerk's Office employees, took the money counted the previous day for deposit. However, the cash was not deposited that day. Ms. Carter stated that the bank rejected the deposit because it was not sorted correctly. When the deposit was finally made on March 23, 2006, only \$22,178 was included. The difference between \$32,490 and \$22,178 is \$10,312.



On March 17, 2006, Ms. Butler wrote a letter to Judge Calvin Johnson indicating that she had removed cash totaling \$18,635 from the evidence room at the court house and placed it in the vault at the Security Center. However, the Security Center vault flooded during Hurricane Katrina and no one from the Clerk's Office had entered the vault since August 19, 2005, before the hurricane. On April 27, 2006, Ms. Butler informed us that no cash had been transferred to the Security Center after the hurricane but had been deposited into the Hibernia account. The amount deposited at the time of the letter was \$298,246, rather than the \$18,635 Ms. Butler reported to Judge Johnson.

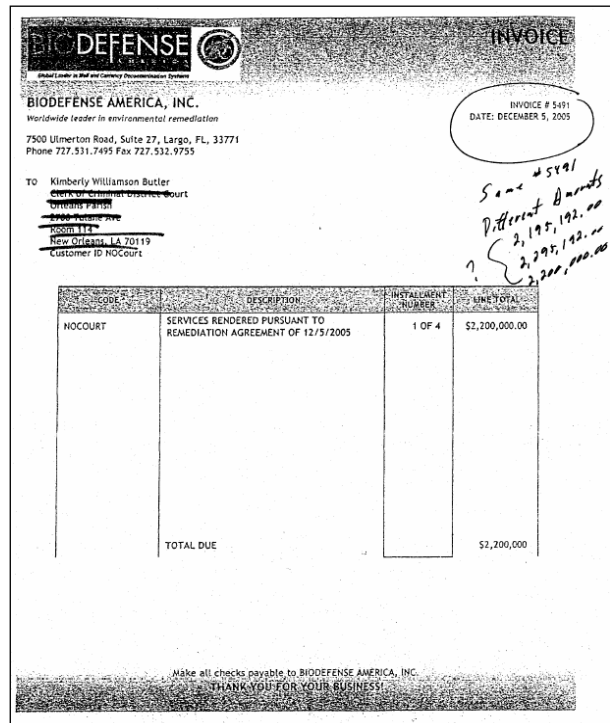
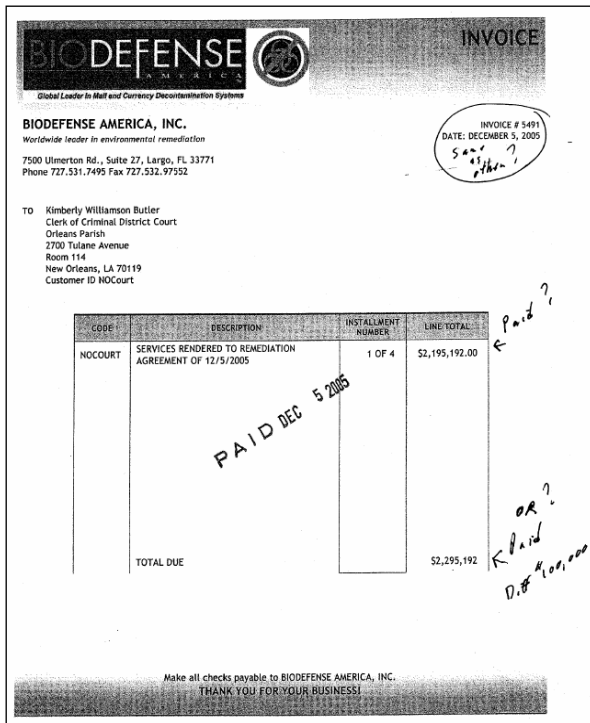
Storm Damage Remediation Contract

Hurricane Katrina caused severe flooding in the Orleans Parish Clerk of Criminal Court evidence rooms. The National Archives and Records Administration provided Ms. Butler with a list of companies to contact for the remediation of those rooms. The Clerk's Office solicited unsealed bids from those companies. In addition, two companies not on the list contacted the Clerk's Office and submitted bids. Ms. Butler awarded the contract to Bio-Defense America (Bio-Defense). Bio-Defense was not on the National Archives recommendation list.

On December 5, 2005, Ms. Butler signed an \$8,000,000 contract with Bio-Defense. The contract provided that an initial payment of either \$350,000 or \$200,000 be made to Bio-Defense upon execution of the agreement. It is unclear which amount was actually required because Ms. Butler signed the contract agreeing to both amounts. The Clerk's Office paid Bio-Defense

\$200,000 on December 13, 2005, without an invoice or documentation of the work performed. This amount was the only payment the Clerk’s Office made to Bio-Defense.

Two different versions of Bio-Defense Invoice #5491, both dated December 5, 2005, were obtained from the Federal Emergency Management Agency (FEMA) during the audit. The first version contained two different amounts in the total column--\$2,295,192 and \$2,195,192. This invoice was also stamped “PAID DEC 5, 2005.” We could not determine who stamped the invoice, but it was provided by the Clerk’s office to FEMA as support for disaster assistance. The FEMA program is, however, a reimbursement program and since the Clerk’s Office had not paid the invoice, FEMA denied assistance.



The second version of Invoice #5491 is for \$2,200,000. Neither version indicates the \$200,000 payment made by the Clerk’s Office or specifies what work was done. The Clerk’s Office did not pay either of these invoices.

Though both parties to the contract were asked, neither the Clerk’s Office nor Bio-Defense could provide a detailed description of work performed. However, a third invoice totaling \$1,641,970 described “Project Event” categories that were broken down into the “Audit Phase,” “Equipment Prep Phase,” and “Pre-Stage Drying Phase.” While it may appear these categories provide sufficient detail, it is unclear as to what specific work was accomplished and who performed the work.

ORLEANS PARISH CLERK OF CRIMINAL DISTRICT COURT

		Date	INVOICE	
		03/03/06	NOCOURT-1	
Bill To:		Payable To:		
The Honorable Kimberly Williamson Bulter Clerk of Criminal Justice Court Orleans Parish 2700 Tulane Ave, Suite 114 New Orleans, LA. 70119		BIODEFENSE America 8294 30th Ave North St. Petersburg, FL 33710		
Service Rendered	Project Event	Quantity	Cost	Total
Contract with chemical engineer as a consultant	Audit Phase	20 hours	\$250.00 per hour	\$5,000.00
Contract with microbiologist as a consultant	Audit Phase	20 hours	\$250.00 per hour	\$5,000.00
Contract with attorney consultant	Audit Phase	115 hours	\$550.00 per hour	\$63,250.00
Ultra sonic cleaning tanks	Equipment Prep Phase	2 machines	\$13,890.00 per machine	\$27,780.00
Proprietary document/picture cleaner and decontaminating machine	Equipment Prep Phase	2 machines	\$326,400.00 per machine	\$652,800.00
Proprietary custom on-site portable freeze-dry equipment	Equipment Prep Phase	1 machines	\$64,900.00 per machine	\$64,900.00
Portable on-site equipment trailers	Equipment Prep Phase	2 Trailers	\$11,900.00 per trailer	\$23,800.00
Wire 2 trailers to be portable to handle equipment	Equipment Prep Phase	2 trailers	\$5,615.00 per trailer	\$11,230.00
Operation Manager	Equipment Prep Phase	237 hours	\$71.61 per hour	\$16,971.18
BIO Hazard Wash Down Area - Trailer	Equipment Prep Phase	1 Shower	\$2,676.50 per shower	\$2,676.50
Proprietary on-site decontamination tank	Equipment Prep Phase	4 machines	\$49,500.00 per machine	\$198,000.00
Generator rental	Pre-Stage Drying Phase	1 month	\$5,161.00 per unit	\$5,161.00
All portable electric equipment, cords, lights, tools, etc.	Pre-Stage Drying Phase	1 unit	\$2,152.99 per unit	\$2,152.99
Pre-employment due diligence on each subcontractor	Pre-Stage Drying Phase	3 People	\$250.00 per person	\$750.00
Dehumidification team and process	Pre-Stage Drying Phase	21 days	\$3,085.71 per day	\$64,800.00
1st shift Supervisor	Pre-Stage Drying Phase	215 hours	\$58.48 per hour	\$12,572.32
Audit of man hours incurred from inception to Pre-Drying	Pre-Stage Drying Phase	1,250 hours	\$86.55 hours	\$108,188.00
Area Security (Wall, Fence, and Door)	Pre-Stage Drying Phase	1 unit	\$6,425.23 per year	\$6,425.23
Dehumidification Equipment	Pre-Stage Drying Phase	504 hours	\$67.28 per hour	\$33,908.00
Daily diesel fuel delivery @ 450 gallons per day	Pre-Stage Drying Phase	5,000 gallons	\$2.80 per gallon	\$14,000.00
Sub Total				\$1,322,366.22
Overhead 10%				\$132,236.62
Profit Margin 15%				\$198,354.93
Minus Profit Margin on Consultation				\$10,987.50
Invoice Total				\$1,641,970.27
Payment due net 20. An interest charge of 1½% per month will be added after 30 days. In Accordance of F-C-10C (page 2) of the Disaster Recovery Manual Revised January 2005 EOP Supplement 3				
BIODEFENSE America		Phone (727) 459-7289	Fax (727) 532-	

For example, a charge of \$63,250 in the “Audit Phase” for “Contract with attorney consultant” included neither the name of the attorney nor an accounting of the work completed. A one-page retainer agreement addressed to Mr. Michael Tardif, the vice president of Bio-Defense, was obtained from the Clerk’s Office. This agreement describes legal services to be provided to Bio-Defense by “Pheterson, Stern, Calabrese, & Neilans, LLP,” a law firm in Rochester, New York. The attorney who signed the agreement on behalf of the law firm is Mr. Derrick Spatarico, the president of Bio-Defense.

Another expense included on the invoice is a \$750 charge for pre-employment due diligence on each subcontractor. While no support for this charge was provided by Bio-Defense, the Clerk’s Office provided a proposal of pre-employment background screening for Bio-Defense. The background screening was to be conducted by TruBackgrounds. Based on the address, TruBackgrounds is co-located with another Florida company, Employment Screening Profiles. TruBackgrounds is not listed as a corporation with the Florida Department of State and Mr. Derrick Spatarico is listed as the president and director of Employment Screening Profiles.

Also included in “Pre-Stage Drying Phase” are charges totaling \$108,188 for an audit of man hours incurred from inception to Pre-Drying. This item lists 1,250 hours at \$86.55 per hour but does not indicate who did the work or the number of hours each person worked. A slightly more detailed description of this charge was included in documents obtained from the Clerk’s Office. In those documents, the audit of man-hours incurred was named Phase One site audit. It was described as “a comprehensive evaluation of the site including but not limited to several site visits, comprehensive biological testing, and coordination with local officials from the court and FEMA.”

The only work that Bio-Defense performed that can be verified is the erection of a fence and a cinder block wall in the basement of the court house. This work is listed on Bio-Defense's invoice as area security at a cost of \$6,425.23 per year. The wall was later removed pursuant to a judge's order.

After Bio-Defense abandoned the job, it was re-bid and awarded to Munters Corporation. This \$4,381,000 contract was signed on May 1, 2006, and is the contract under which the Clerk's Office had the storm damage remediation work done.

Credit Card Purchases

Ms. Butler became the Clerk of Court for the Orleans Parish Criminal District Court in November 2003 and remained in office until May 2006. During that period, Ms. Butler and her employees made numerous credit card purchases using the Clerk's Office credit card. Specifically, during the period February 2004 through May 2006, there were 279 credit card transactions totaling \$41,804 but only 75 (26.9%) of these transactions were supported with receipts.

Since Ms. Butler did not maintain documentation to support purchases from these vendors, we could not determine the business purpose, necessity, or reasonableness of the purchase or if the purchase benefited the Clerk's Office. Purchases with no valid business purpose that are not necessary to the operations of the Clerk's Office or that are made at an unreasonable price may be a violation of the Louisiana Constitution,² which prohibits the donation of public funds.

During the period, the Clerk's Office also incurred \$1,868 in finance charges and late penalties. Had Ms. Butler ensured that the credit card was paid in full each month and paid the bills in a timely manner, the Clerk's Office would not have incurred any of these fees.

On January 31, 2006, Ms. Butler responded to an independent audit of her office for the year ended 2004. One finding of that audit cited the lack of supporting documentation for credit card charges. Ms. Butler responded that credit card usage would be limited to out-of-town travel expenses and emergency purchases. She also wrote that source documentation would be required with every purchase. Of 14 charges to the office credit card since the response, none appear to be for out-of-town travel or emergency purchases and supporting documentation was available for only seven of the charges.

In March 2006, the credit card company suspended the account and requested the return of the card because of non-payment. Since this event, the Clerk's Office made payments and use of the card was reinstated.

² **Article 7, Section 14 of the Louisiana Constitution** provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

The Clerk's Clean Slate Program

In mid 2005, Ms. Butler created a community outreach program called the Clerk's Clean Slate Program. Ms. Butler designed this program to:

- (1) provide information to individuals seeking to clear their criminal records;
- (2) encourage youth throughout the City to embrace positive values and live productive, crime free lives;
- (3) help individuals restore their voting rights; and
- (4) assist victims of house fires.

Article 5, Section 28 of the Louisiana Constitution of 1974³ provides for the general powers and duties of the clerk. These powers and duties do not specifically include establishing outreach programs but provide for other duties established by law. We were not provided with any law or other approval authorizing Ms. Butler to create this program. According to Judge Edwin Lombard, Supreme Court appointed partner/overseer of the Clerk's Office, Ms. Butler did not have any statutory authority to spend public funds on the Clean Slate Program. Absent this authority, Ms. Butler may have violated Article 7, Section 14 of the Louisiana Constitution.

In July and August 2005, Ms. Butler used public funds totaling \$7,085 to support the Clean Slate Program. Of the \$7,085, a total of \$380 was paid directly to Ms. Butler. The remaining \$6,705 was paid to vendors for T-shirts, consulting, and food.

Of particular interest was the "Kimberly Williams" (Williamson Butler) breakfast at the Praline Connection on July 16, 2005, that Ms. Butler sponsored using public funds. The Clerk's Office was required to pay a deposit of \$438.75 and a final payment of \$1,023.75 for a total cost of \$1,462.50. The Praline Connection charged \$11.70 including gratuity per breakfast, which implies that 125 (1,462.50/11.70) meals were served. A flyer for the event indicated that the cost of the breakfast was \$15.00 per attendee. However, no records indicate how many people actually attended the event, how many people paid, nor who collected the \$15 per attendee. Also, no records indicate what funds if any were deposited into the Clerk's bank account.

Ms. Butler provided no documentation showing how this program falls within the legal responsibility of the Clerk's Office resulting in a possible violation of Article 7, Section 14 of the Louisiana Constitution. We were also unable to find evidence that Ms. Butler had legal authority to use public funds to support the Clean Slate Program.

³ **Article 5, Section 28 of the Louisiana Constitution** provides, in part, that in each parish the clerk of the district court shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, may appoint minute clerks with duties and powers provided by law.

Mr. John Reed, Ms. Butler's attorney, declined the opportunity for Ms. Butler to provide an explanation for the questionable and undocumented expenses.

This report has been provided to the Orleans Parish District Attorney. The actual determination as to whether an individual is subject to formal charge is at the discretion of the district attorney.⁴

⁴ **Louisiana Revised Statute 14:68** provides, in part, that unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently.

Louisiana Revised Statute 14:134 provides, in part, that malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.

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We recommend that the Orleans Parish Clerk of Criminal Court:

- Require receipts and explanations be provided for all purchases made with the office credit card, payments made to vendors, and reimbursements to employees
- Implement policies and procedures prohibiting the use of the office credit card to make personal purchases
- Pay all credit card bills in full and by the due date to avoid being assessed late fees and finance charges
- Ensure all future programs established are within the scope of responsibility of the office
- Institute a perpetual inventory system for cash stored in the evidence rooms
- Develop and ensure proper procedures are followed for the systematic removal, counting, and depositing of evidence money once it has been held for longer than five years
- Deposit cash in a timely manner to decrease the opportunity for theft, misappropriation, or loss
- Verify work has been performed on contracts before payments are made

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The Office of Legislative Auditor received allegations about improper handling of evidence money, improper charges being made on an office credit card, and paying for work under a contract that was not actually performed. An examination was conducted to determine the validity of these allegations.

The procedures performed during this examination consisted of:

- (1) interviewing employees and officials of the Clerk of Court's Office;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records of the Clerk of Court's Office;
- (4) performing observations; and
- (5) reviewing applicable state laws and regulations.

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Management's Response



CLERK'S OFFICE
CRIMINAL DISTRICT COURT



2700 Tulane Avenue #114
New Orleans, LA 70119

ARTHUR A. MORRELL
CLERK OF COURT

OFFICE (504) 658-9000
FAX (504) 658-9183

February 9, 2007

Mr. Steve J. Theriot, CPA
Legislative Auditor
State of Louisiana
1600 North Third Street
Baton Rouge, LA 70802

VIA FACSIMILE and U.S. POSTAL MAIL

Mr. Theriot:

In regards to your staff's recent audit of the financial records from the previous administration of this office I am providing you with a response to all items requested of me.

ITEM #1-Bio-Defense Contract:

As of today February 9, 2007 Bio-Defense was paid \$200,000.00 by the previous Clerk Kimberly Williamson-Butler. My office has not located any substantial evidence to support any work that was done. Michael Darnell (1540 N. Broad Street, NOLA, 70119 504.945.0042) attorney for the Clerk's office is currently conducting an investigation into the billing and payments for this vendor.

ITEM#2 Bank Accounts:

This Administration has various bank accounts whose funds are dedicated and all accounts are balanced

ITEM#3 Credit Cards:

This current administration has not issued any credit cards nor intends to do so.

ITEM#4 Outreach Program:

This Administration has no intention of continuing Ms. Butler's "Clean Slate" program nor does it intend to create an outreach program of its own.

Should your office have any further questions or concerns please do not hesitate to contact me 504.658.9105.

Respectfully,

A handwritten signature in black ink, appearing to read 'Morrell', written in a cursive style.

Arthur A. Morrell